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WAC 458-57-005 Nature of estate tax, definitions. (1) **Introduction.** This rule describes the nature of Washington state's estate tax as it is imposed by chapter 83.100 RCW (Estate and Transfer Tax Act) for deaths occurring on or before May 16, 2005. The estate tax rules for deaths occurring on or after May 17, 2005, can be found in WAC 458-57-105 through 165. It also defines terms that will be used throughout chapter 458-57 WAC (Washington Estate and Transfer Tax Reform Act Rules).

(2) **Nature of Washington's estate tax.** The estate tax is neither a property tax nor an inheritance tax. It is a tax imposed on the transfer of the entire taxable estate and not upon any particular legacy, devise, or distributive share.

(a) The state of Washington operates under RCW 83.100.020, which references the Internal Revenue Code (IRC) as it existed January 1, ~~((2001))~~ 2005. ~~((Federal estate tax law changes enacted after January 1, 2001, do not apply to the reporting requirements of Washington's estate tax. For deaths occurring January 1, 2002, and after, Washington has different estate tax reporting requirements than those of the federal government. There will be estates that must file an estate tax return with the state of Washington, even though they are not required to file with the federal government. Washington will continue to collect 100% of the available state death tax credit under the 2001 IRC for all estates that must file a Washington return.))~~ The Washington State Estate and Transfer Tax Return and the instructions for completing the return can be found on the department's website at <http://www.dor.wa.gov/> under the heading titled forms. The return and instructions can also be obtained by calling the estate tax section at ~~((360-753-5547 or 360-753-7518))~~ (360) 570-3265 (option 2) ~~((or by writing to the following address:~~

~~State of Washington
Department of Revenue
Special Programs Division
P.O. Box 448
Olympia, WA 98507-0448)).~~

(b) The estate tax does not apply to completed absolute lifetime transfers. Section 2035(d) of the ~~((2001))~~ Internal Revenue Code generally exempts such transfers. To the extent permitted by this provision, lifetime transfers are not subject to Washington estate tax. The state of Washington does not have a gift tax.

(3) **Definitions.** The following terms and definitions are applicable throughout chapter 458-57 WAC:

- (a) "Decedent" means a deceased individual;
- (b) "Department" means the department of revenue, the director of that department, or any employee of the department exercising authority lawfully delegated to him by the director;
- (c) "Escheat" of an estate means that whenever any person dies, whether a resident of this state or not, leaving property in an estate subject to the jurisdiction of this state and without being survived by any person entitled to that same property under the laws of this state, such estate property shall be designated escheat property and shall be subject to the provisions of RCW

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11.08.140 through ~~((11.08.280))~~ 11.08.300.

(d) "Federal credit" means the maximum amount of the credit for state taxes allowed by section 2011 of the ~~((2001))~~ Internal Revenue Code. This credit is calculated using an "adjusted taxable estate" figure, which is simply the taxable estate, less sixty thousand dollars. However, when the term "federal credit" is used in reference to a generation-skipping transfer (GST), it means the maximum amount of the credit for state taxes allowed by section 2604 of the ~~((2001))~~ Internal Revenue Code;

(e) "Federal return" means any tax return required by chapter 11 (Estate tax) or chapter 13 (Tax on generation-skipping transfers) of the ~~((2001))~~ Internal Revenue Code;

(f) "Federal tax" means tax under chapter 11 (Estate tax) of the ~~((2001))~~ Internal Revenue Code. However, when used in reference to a GST, "federal tax" means the tax under chapter 13 (Tax on generation skipping transfers) of the ~~((2001))~~ Internal Revenue Code;

(g) "Generation-skipping transfer" or "GST" means a "generation-skipping transfer" as defined and used in section 2611 of the ~~((2001))~~ Internal Revenue Code;

(h) "Gross estate" means "gross estate" as defined and used in section 2031 of the ~~((2001))~~ Internal Revenue Code;

(i) "Internal Revenue Code" or "IRC" means the United States Internal Revenue Code of 1986, as amended or renumbered on January 1, ~~((2001))~~ 2005;

(j) "Nonresident" means a decedent who was domiciled outside Washington at the time of death;

(k) "Person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity and, to the extent permitted by law, any federal, state, or other governmental unit or subdivision or agency, department, or instrumentality thereof;

(l) "Person required to file the federal return" means any person required to file a return required by chapter 11 or 13 of the ~~((2001))~~ Internal Revenue Code, such as the personal representative of an estate, a transferor, trustee, or beneficiary of a generation-skipping transfer, or a qualified heir with respect to qualified real property, as defined and used in section 2032A(c) of the ~~((2001))~~ Internal Revenue Code;

(m) "Person responsible," means the person responsible for filing the federal and state returns and is the same person described in subsection (l) above;

(n) "Property," when used in reference to an estate tax transfer, means property included in the gross estate. However, when used in reference to a generation-skipping transfer, "property" means all real and personal property subject to the federal tax;

(o) "Resident" means a decedent who was domiciled in Washington at time of death;

(p) "State return" means the Washington Estate Tax Return required by RCW 83.100.050;

(q) "Transfer" means "transfer" as used in section 2001 of the ~~((2001))~~ Internal Revenue Code, or a disposition or cessation of qualified use as defined and used in section 2032A of the ~~((2001))~~ Internal Revenue Code; and

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(r) "Trust" means "trust" under Washington law and any arrangement described in section 2652 of the ((2004)) Internal Revenue Code.

WAC 458-57-015 Valuation of property, property subject to estate tax, how to calculate the tax.

(1) **Introduction.** This rule applies to deaths occurring on or before May 16, 2005, and is intended to help taxpayers determine and pay the correct amount of estate tax with their state return. The estate tax rules for deaths occurring on or after May 17, 2005, can be found in WAC 458-57-105 through 165. It explains the necessary steps for determining the tax, and provides examples of how the federal estate tax unified credit relates to the amount that must be reported on the state return. (If a nonresident decedent has property located within Washington at the time of death refer to WAC 458-57-025 to determine the amount of tax payable to Washington.)

(2) **Valuation.** The value of every item of property in a decedent's gross estate is its fair market value. However, the personal representative may elect to use the alternate valuation method under section 2032 of the ((2004)) Internal Revenue Code (IRC), and in that case the value is the fair market value at that date, including the adjustments prescribed in that section of the IRC. The valuation of certain farm property and closely held business property, properly made for federal estate tax purposes pursuant to an election authorized by section 2032A of the ((2004)) IRC, is binding for state estate tax purposes.

(3) **Property subject to estate tax.** The estate tax is imposed on transfers of the taxable estate, as defined in section 2051 of the ((2004)) IRC.

(a) The first step in determining the value of the decedent's taxable estate is to determine the total value of the gross estate. The value of the gross estate includes the value of all the decedent's tangible and intangible property at the time of death. In addition, the gross estate may include property in which the decedent did not have an interest at the time of death. A decedent's gross estate for federal estate tax purposes may therefore be different from the same decedent's estate for local probate purposes. Sections 2031 through 2046 of the ((2004)) IRC provide a detailed explanation of how to determine the value of the gross estate. The following are examples of items that may be included in a decedent's gross estate and not in the probate estate:

(i) Certain property transferred by the decedent during the decedent's lifetime without adequate consideration;

(ii) Property held jointly by the decedent and others;

(iii) Property over which the decedent had a general power of appointment;

(iv) Proceeds of certain policies of insurance on the decedent's life annuities; and

(v) Dower and curtesy of a surviving spouse or a statutory estate in lieu thereof.

(b) The value of the taxable estate is determined by subtracting the authorized exemption and deductions from the value of the gross estate. Under various conditions and limitations, deductions are allowable for expenses, indebtedness, taxes, losses, charitable transfers, and transfers to a surviving spouse. Sections 2051 through 2056A of the ((2004)) IRC provide a detailed explanation of how to determine the value of the taxable estate.

(4) **Imposition of Washington's estate tax.** A tax in an amount equal to the federal credit is

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imposed by RCW 83.100.030 upon the taxable estate of every decedent. Washington's estate tax is due in every case in which the gross estate tax exceeds the unified credit as specified in section 2010 of the ((2001)) IRC, and there is credit available to be taken, with the exception that all applicable federal estate tax credits are to be applied to the estate's tax liability before the state estate tax liability is computed.

(a) The following tables are taken from the ((2001)) IRC. They show the maximum amount of federal credit available for state death taxes. The amount of federal credit computed multiplied by the appropriate fraction is ~~also~~ the amount of Washington estate tax due.

Calculate the credit for state death taxes

(i) Step one - calculate the adjusted taxable estate:

Worksheet

Adjusted Taxable Estate

1. Taxable estate (from ~~Tax Computation, WA Form REV 85-0046~~ federal from 706, Part 2, Line 3) \$.

2. Adjustment \$60,000

3. Adjusted taxable estate. Subtract line 2 from line 1. Use this amount to compute maximum credit for state death taxes in Table ~~(iiB)~~.

(ii) Step two - apply Table B to the adjusted taxable estate to calculate the credit for state death taxes:

(A) -- Taxable estate, equal to or more than...	(B) -- and, Taxable estate, less than...	(C) -- Base credit on amount in column (A)	(D) -- Rate of credit on excess over amount in column (A) (AS A PERCENT)
\$ 0	\$ 40,000	\$ 0	0.0
\$ 40,000	\$ 90,000	\$ 0	0.8
\$ 90,000	\$ 140,000	\$ 400	1.6
\$ 140,000	\$ 240,000	\$ 1,200	2.4
\$ 240,000	\$ 440,000	\$ 3,600	3.2
\$ 440,000	\$ 640,000	\$ 10,000	4.0
\$ 640,000	\$ 840,000	\$ 18,000	4.8
\$ 840,000	\$ 1,040,000	\$ 27,600	5.6
\$ 1,040,000	\$ 1,540,000	\$ 38,800	6.4
\$ 1,540,000	\$ 2,040,000	\$ 70,800	7.2
\$ 2,040,000	\$ 2,540,000	\$ 106,800	8.0
\$ 2,540,000	\$ 3,040,000	\$ 146,800	8.8
\$ 3,040,000	\$ 3,540,000	\$ 190,800	9.6
\$ 3,540,000	\$ 4,040,000	\$ 238,800	10.4
\$ 4,040,000	\$ 5,040,000	\$ 290,800	11.2
\$ 5,040,000	\$ 6,040,000	\$ 402,800	12.0

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\$ 6,040,000	\$ 7,040,000	\$ 522,800	12.8
\$ 7,040,000	\$ 8,040,000	\$ 650,800	13.6
\$ 8,040,000	\$ 9,040,000	\$ 786,800	14.4
\$ 9,040,000	\$ 10,040,000	\$ 930,800	15.2
\$ 10,040,000	\$ 1,082,800	16.0

(iii) Step three - multiply the credit for state death taxes by the percentage for the year of the decedent's death:

Year	Percentage
2002	.75
2003	.50
2004	.25
2005	0.00

(b) **Examples.** The following are examples of how the estate tax is applied. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.

(i) A married woman dies in the year 2002, leaving her husband and children surviving. Her taxable estate, computed after allowance of the marital deduction, is ~~(((\$900,000))~~ \$1,100,000. The adjusted taxable estate is ~~(((\$840,000 - (\$900,000 - \$60,000))~~ \$1,040,000 ~~(\$1,100,000 - \$60,000)~~. The Washington state estate tax due is ~~(((\$27,600 (the base credit shown in column (C) on the first \$840,000)))~~ \$29,100 ~~(\$38,800 multiplied by .75)~~.

(ii) A married man dies with all of his property passing to his wife, outright under a community property agreement. His marital deduction under section 2056 of the ~~((2004))~~ IRC reduces his federal taxable estate below the applicable exclusion amount. Because his taxable estate is below the applicable exclusion amount, while no Washington estate tax is due a return must be filed.

(iii) The federal taxable estate of a decedent is \$100,000 (before gifts are added, which place the estate into a taxable category). The adjusted taxable estate is \$40,000 for state estate tax purposes (\$100,000 - \$60,000). No Washington estate tax is due because section 2011 of the ~~((2004))~~ IRC provides for no credit unless the adjusted taxable estate exceeds \$40,000. *Gifts can push an estate into a taxable category.

(iv) A widow dies in 2003, leaving a taxable estate of ~~(((\$725,000))~~ \$1,030,000. The amount of tax payable to the state of Washington is computed as follows: Taxable estate of ~~(((\$725,000))~~ \$1,030,000 less \$60,000 equals an adjusted taxable estate of ~~(((\$665,000))~~ \$970,000. The state death tax credit ~~((2004))~~ IRC section 2011 on the first ~~(((\$640,000))~~ \$840,000 is ~~(((\$18,000))~~ \$27,600. The state death tax credit for the ~~(((\$25,000))~~ \$130,000 increment ~~(\$665,000 - \$640,000~~ \$970,000 - \$840,000) is ~~(((\$1,200))~~ \$7,280 ~~((4.8% of \$25,000))~~ (5.6% of \$130,000). The total Washington estate tax liability is ~~(((\$19,200 - (\$18,000 + \$1,200)))~~ \$17,440 [((\$27,600 + \$7,80) x .50] however, the state estate tax cannot exceed the adjusted gross estate tax (line 14) which in this case would be ~~(((\$9,250))~~ \$12,300. Therefore, the state estate tax would be

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(((\$9,250)) \$12,300 because it is the lower of the two. This occurs in a small window over the applicable exemption threshold amount.

WAC 458-57-017 Property subject to generation-skipping transfer tax, how to calculate the tax, allocation of generation-skipping transfer exemption. (1) **Introduction.** The generation-skipping transfer tax was repealed effective May 17, 2005. If the taxable termination or distribution is the result of a death that occurred on or after May 17, 2005, there is no Washington generation-skipping transfer tax. This repeal does not affect generation-skipping transfer taxable terminations or distributions that result from a death that occurred on or before May 16, 2005. This rule applies only to taxable terminations or distributions that occur as the result of a death that occurred on or before May 16, 2005.

(2) This rule is intended to help taxpayers determine and pay the correct amount of generation-skipping transfer (GST) tax with their state return. It explains what property is subject to the tax, the calculation of the tax, and the allocation of the generation-skipping transfer exemption.

((((2))) (3) **Property subject to generation-skipping transfer tax.** If real or tangible personal property subject to federal GST tax, as defined and used in section 2611 of the ((2004)) IRC, is located in this state or if the trust has its principal place of administration in this state at the time of the generation-skipping transfer, a tax in an amount equal to the federal credit provided by section 2604 of the ((2004)) IRC is imposed on every generation-skipping transfer.

((((3))) (4) **Calculation of the tax.** The allowable Washington credit equals the federal GST tax on the transfer multiplied by 5% (.05). If state GST tax credit was paid to another state(s), the taxpayer must attach evidence of the credit paid to the Washington return. The Washington State Estate and Transfer Tax Return and the instructions for calculating the GST tax can be found on the department's website at <http://www.dor.wa.gov/> under the heading titled forms. The return and instructions can also be obtained by calling the estate tax section at 360-753-5547 or 360-753-7518 or by writing to the following address:

State of Washington

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Special Programs Division

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Olympia, WA 98507-0448 (360) 570-3265, option 2.

((((4))) (5) **Allocation of generation-skipping transfer exemption.** The allocation(s) of the GST exemption for Washington purposes will be the same as the allocation(s) made for federal GST exemption purposes up to the amount allowed by section 2631 of the ((2004)) IRC.

WAC 458-57-025 Determining the tax liability of nonresidents. (1) **Introduction.** This rule applies to deaths occurring on or before May 16, 2005, and discusses how property of nonresident decedents is taxed if that property is located within Washington at the time of death. The estate tax rules for deaths occurring on or after May 17, 2005, can be found in WAC 458-57-105 through 165.

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(2) **Nonresident decedents and Washington's estate tax.** If any decedent has tangible personal property and/or real property located in Washington state at the time of death, that property is subject to Washington's estate tax.

(a) **The reciprocity exemption.** A nonresident decedent's estate is exempt from Washington's estate tax if the nonresident's state of domicile exempts the property of Washington residents from estate, inheritance, or other death taxes normally imposed by the domicile state. The nonresident decedent must have been a citizen and resident of the United States at the time of death. Also, at the time of death the laws of the domicile state must have made specific reference to this state, or must have contained a reciprocal provision under which nonresidents of the domicile state were exempted from applicable death taxes with respect to property or transfers otherwise subject to the jurisdiction of that state.

In those instances where application of this provision results in loss of available federal credit which would otherwise be allowed for federal tax purposes, Washington will absorb that proportional share which is applicable to property within the jurisdiction of this state. Application of this provision will not act to increase the total tax obligation of the estate.

(b) **Property of a nonresident's estate which is located in Washington.** A nonresident decedent's estate may have either real property or tangible personal property located in Washington at the time of death.

(i) All real property physically situated in this state, with the exception of federal trust lands, and all interests in such property, are deemed "located in" Washington. Such interests include, but are not limited to:

- (A) Leasehold interests;
- (B) Mineral interests;
- (C) The vendee's (but not the vendor's) interest in an executory contract for the purchase of real property;
- (D) Trusts (beneficial interest in trusts of realty); and
- (E) Decedent's interest in jointly owned property (e.g., tenants in common, joint with right of survivorship).

(ii) Tangible personal property of a nonresident decedent shall be deemed located in Washington only if:

- (A) At the time of death the property is situated in Washington; and
- (B) It is present for a purpose other than transiting the state.

(iii) For example, consider a nonresident decedent who was a construction contractor doing business as a sole proprietor. The decedent was constructing a large building in Washington. At the time of death, any of the decedent's equipment that was located at the job site in Washington, such as tools, earthmovers, bulldozers, trucks, etc., would be deemed located in Washington for estate tax purposes. Also, the decedent had negotiated and signed a purchase contract for speculative property in another part of Washington. For estate tax purposes, that real property should also be considered a part of the decedents' estate located in Washington.

(c) **Formula to calculate Washington's estate tax for nonresident decedents.** The

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amount of tax payable to Washington for a nonresident decedent equals the amount of federal credit multiplied by a fraction, the numerator of which is the value of the property located in Washington, and the denominator of which is the value of the decedent's gross estate. Restated: $\text{Federal Credit} \times (\text{Gross Value of Property in Washington} / \text{Decedent's Gross Estate}) = \text{Amount of Washington Estate Tax Due}$. This formula uses the gross value determined for estate tax purposes of any property located in Washington. No reduction will be allowed for any mortgages, liens, or other encumbrances or debts associated with such property except to the extent allowable in computing the gross estate for estate tax purposes.

WAC 458-57-035 Washington estate tax return to be filed -- Penalty for late filing -- Interest on late payments -- Waiver or cancellation of penalty -- Application of payment.

(1) **Introduction.** This rule applies to deaths occurring on or before May 16, 2005, and discusses the due date for filing of Washington's estate tax return and payment of the tax due. It explains that a penalty is imposed on the taxes due with the state return when the return is not filed on or before the due date, and that interest is imposed when the tax due is not paid by the due date. The rule also discusses the limited circumstances under which the law allows the department of revenue to cancel or waive the penalty, and the procedure for requesting that cancellation or waiver. The Washington State Estate and Transfer Tax Return and the instructions for completing return can be found on the department's website at <http://www.dor.wa.gov/> under the heading titled forms. The return and instructions can also be obtained by calling the estate tax section at 360-((753-5547 or 360-753-7518 or by writing to the following address:

~~State of Washington~~

~~Department of Revenue~~

~~Special Programs Division~~

~~P.O. Box 448~~

~~Olympia, WA 98507-0448)) 570-3265. The estate tax rules for deaths occurring on or after May 17, 2005, can be found in WAC 458-57-105 through 165.~~

(2) **Filing the state return -- Payment of the tax due.** The Washington estate tax return (state return) referred to in RCW 83.100.050 and a copy of the federal estate tax return (federal return) and all supporting documentation~~((, if one must be filed,))~~ is due nine months from the date of the decedent's death. The tax due with the state return must be paid on or before the due date.

(a) Section 6075 of the ~~2004~~ Internal Revenue Code (IRC) requires that the federal return be filed within nine months after the date of the decedent's death. In the case of any estate for which a federal return must be filed under the current IRC, a state return must be filed with the Washington state department of revenue (department) on or before the date on which the federal return is required to be filed. (This may include a federally granted extension of time for filing. See subsection (2)(b).)

(b) ~~((Extensions to file or extensions for payment of tax for estates that must file a federal estate tax return.~~

~~((+)))~~ Section 6081 of the ~~((2004))~~ IRC permits the granting of a reasonable extension of time for

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filing the federal return, generally not to exceed six months from the original due date. If a federal extension of the time to file is granted, the personal representative is required to file a true copy of that extension with the department on or before the original due date, or within thirty days of the issuance of the federal extension, whichever is later. RCW 83.100.050(2). If the personal representative fails to do so, the department may require the personal representative to file the state return on the date that the federal return would have been due had the federal extension not been granted.

((ii)) (c) When the personal representative obtains an extension of time for payment of the federal tax, or elects to pay that tax in installments, the personal representative may choose to pay the state estate tax over the same time period and in the same manner as the federal tax. The personal representative is required to file a true copy of that extension with the department on or before the original due date, or within thirty days of the issuance of the federal extension, whichever is later. RCW 83.100.060(2). If the personal representative fails to do so, the department may require the personal representative to pay the state tax on the date that the federal tax would have been due had the federal extension not been granted.

~~((c)) **Extensions to file for estates that are not required to file a federal estate tax return.** For those estates that are not required to file a federal return, the personal representative may request a one-time automatic six-month extension to file. The request must be in writing and acknowledge that interest will begin to accrue from the original due date of the state return. The written request for the extension must be made prior to the date the state return is due.~~

~~(d) **Extension to pay tax owed for estates that are not required to file a federal estate tax return.** For those estates that are not required to file a federal return, the personal representative may request an extension of time for paying the tax owed when payment of the tax would cause an undue hardship upon the estate or for a payment plan for closely held businesses. The granting of an extension of time to pay the tax owed or for a payment plan for closely held business will not operate to prevent the running of interest. RCW 83.100.070.~~

~~(i) **Hardship extensions to pay.**~~

~~(A) In any case in which the department finds that payment, on the due date prescribed, or any part of a deficiency would impose undue hardship upon the estate, the department may extend the time for payment for a period or periods not to exceed one year for any one period and for all periods not to exceed four years from the original due date of payment.~~

~~(B) The extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the estate. It must appear that a substantial financial loss, for example, due to the sale of property at a sacrifice price, will result to the estate from making payment of the tax owed at the date payment is due. If a market exists, a sale of property at the current market price is not ordinarily considered as resulting in an undue hardship. No extension will be granted if the deficiency is due to negligence or intentional disregard of rules and regulations or to fraud with intent to evade the tax.~~

~~(C) An application for such an extension must be in writing and must contain, or be supported by, information in a written statement declaring that it is made under penalties of perjury~~

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~~showing the undue hardship that would result to the estate if the extension were refused. The application, with the supporting information, must be filed with the department. When received, it will be examined, and, if possible, within thirty days will be denied, granted, or tentatively granted subject to certain conditions of which the personal representative will be notified. The department will not consider an application for such an extension unless it is applied for on or before the due date for payment. If the personal representative desires to obtain an additional extension, it must be applied for on or before the date of the expiration of the previous extension.~~ (D) ~~The amount of tax owed for which an extension is granted, along with interest as determined by RCW 83.100.070, shall be paid on or before the expiration of the period of extension without the necessity of notice and demand from the department.~~

~~(ii) **Payment plans for closely held businesses.** The department will abide by the provisions of section 6166 of the 2001 IRC for the granting of payment plans for closely held businesses.))~~

~~((e))~~ (d) The department shall issue a release when Washington's estate tax has been paid. Upon issuance of a release, all property subject to the tax shall be free of any claim for the tax by the state. RCW 83.100.080.

(3) **The late filing penalty.** If the state return is not filed by the due date, or any extension of the state return's due date, the person required to file the return may be subject to a late filing penalty.

(a) **When does the penalty apply?** This penalty applies if the person required to file the return has not timely filed the state return with the department prior to being notified by the department, in writing, of the necessity to file the state return. The late payment penalty is equal to five percent of the tax due for each month during which the state return has not been filed, not to exceed the lesser of twenty-five percent of the tax or one thousand five hundred dollars. RCW 83.100.070.

(b) **How is the penalty computed?** The penalty is the equivalent of five percent for each month, but is accrued on a daily basis for those periods less than a month. For any portion of a month, it is calculated by taking the five percent monthly rate and dividing it by the number of days from the beginning of the month through the date the return is filed, including the filing date.

For example, assume a state return is due on February 3rd but is not filed until April 20th of the same year. The state return is delinquent starting with February 4th. The amount of tax due with the state return is \$10,000.

(i) The penalty should be computed as follows:

Feb 4-Mar 3	\$10,000 tax at 5% per month	\$500.00
Mar 4-Apr 3	\$10,000 tax at 5% per month	\$500.00
Apr 4-Apr 20	\$10,000 tax at .1667% x 17 days	\$283.39
Total delinquent penalty due on April 20th filing date		\$1,283.39

~~((ii) In this example, the first two calendar months are complete and incur the full five percent~~

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penalty. The last portion of a month is a total of seventeen days, including both April 4th and April 20th. Since April has thirty days total, the five percent monthly rate is divided by the thirty days in April to arrive at a daily rate of .001667 (or .1667 percent). The daily rate is then multiplied by the seventeen days of penalty accrual to arrive at the total percentage of penalty due for that portion of a month (.001667 x 17 days = .028339 or 2.8339 percent).))

Feb 4- Feb 28	\$10,000 tax at 5% per month	\$446.43
Mar 1- Mar 31	\$10,000 tax at 5% per month	\$500.00
Apr 1-Apr 20	\$10,000 tax at .1667% x 17 days	\$333.34
Total delinquent penalty due on April 20th filing date		\$1,297.77

(ii) In this example, the first month (February) is a partial month. February has twenty-eight days, the five percent monthly rate is divided by twenty-eight days to arrive at a daily rate of .0017857 (or .17857 percent). The daily rate is then multiplied by the twenty-five days of penalty accrual to arrive at the total percentage of penalty due for that portion of a month (.0017857 x 25 days = .044643 or 4.4643 percent). The second calendar month (March) is complete and incurs the full five percent penalty. The last portion of a month is a total of seventeen days, including both April 4th and April 20th. Since April has thirty days total, the five percent monthly rate is divided by the thirty days in April to arrive at a daily rate of .001667 (or .1667 percent). The daily rate is then multiplied by the twenty days of penalty accrual to arrive at the total percentage of penalty due for that portion of a month (.001667 x 20 days = .03334 or 3.334 percent).

(4) **Interest is imposed on late payment.** The department is required by law to impose interest on the tax due with the state return if payment of the tax is not made on or before the due date. RCW 83.100.070. Interest applies to the delinquent tax only, and is calculated from the due date until the date of payment. Interest imposed for periods after December 31, 1996, will be computed at the annual variable interest rate described in RCW 82.32.050(2). Interest imposed for periods prior to January 1, 1997, will be computed at the rate of twelve percent per annum.

(5) **Waiver or cancellation of penalties.** RCW 83.100.070(3) authorizes the department to waive or cancel the penalty for late filing of the state return under limited circumstances.

(a) **Claiming the waiver.** A request for a waiver or cancellation of penalties should contain all pertinent facts and be accompanied by such proof as may be available. The request must be made in the form of a letter and submitted to the department's special programs division. The person responsible bears the burden of establishing that the circumstances were beyond the responsible person's control and directly caused the late filing. The department will cancel or waive the late filing penalty imposed on the state return when the delinquent filing is the result of circumstances beyond the control of the person responsible for filing of the state return. The person responsible for filing the state return is the same person who is responsible for filing the federal return.

(b) **Circumstances eligible for waiver.** In order to qualify for a waiver of penalty the

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circumstances beyond the control of the person responsible for filing the state return must directly cause the late filing of the return. These circumstances are generally immediate, unexpected, or in the nature of an emergency. Such circumstances result in the person responsible not having reasonable time or opportunity to obtain an extension of their due date (see subsection (2)(b)) or to otherwise timely file the state return. Circumstances beyond the control of the responsible person include, but are not necessarily limited to, the following:

(i) The delinquency was caused by the death or serious illness of the person responsible for filing the state return or a member of the responsible person's immediate family. In order to qualify for penalty waiver, the death or serious illness must directly prevent the person responsible from having reasonable time or opportunity to arrange for timely filing of the state return. Generally, the death or serious illness must have occurred within sixty days prior to the due date, provided that a valid state return is filed within sixty days of the due date.

(ii) The delinquency was caused by an unexpected and unavoidable absence of the person responsible. Generally, this absence must be within sixty days prior to the due date, provided that a valid state return is filed within sixty days of the due date. "Unavoidable absence of the person responsible" does not include absences because of business trips, vacations, personnel turnover, or personnel terminations.

(iii) The delinquency was caused by the destruction by fire or other casualty of estate records necessary for completion of the state return.

(iv) An estate tax return was timely filed, but was filed incorrectly with another state due to an issue of the decedent's domicile.

(v) A Washington estate tax return was properly prepared and timely filed, but was sent to the location for filing of the federal estate tax return.

(6) **Waiver or cancellation of interest.** Title 83 RCW (Estate Taxation) does not provide any circumstances that allow for waiver of the interest, even though penalty may be waived under limited circumstances (see subsection (5)).

(7) **Application of payment towards liability.** The department will apply taxpayer payments first to interest, next to penalties, and then to the tax, without regard to any direction of the taxpayer.

WAC 458-57-045 Administration of the tax -- Releases, amended returns, and refunds(~~;~~ ~~heirs of escheat estates~~)). (1) **Introduction.** This rule applies to deaths occurring on or before May 16, 2005. This rule contains information on releases issued by the department for state estate taxes paid. It explains how and when an amended state return should be filed. (~~The rule also gives several requirements for notification to the department when a claimed heir to an escheat estate is located.~~) Information on escheat estates and absentee distributees (missing heirs) can be found at RCW 458-57-XXX (drafter's note - new escheat/missing heir rule). The estate tax rules for deaths occurring on or after May 17, 2005, can be found in WAC 458-57-105 through 165.

(2) **Releases.** When the state estate taxes have been paid in full, the department will issue

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a release to the personal representative upon request. The request will include a completed state return and a copy of the completed federal return, if one was filed. The final determination of the amount of taxes due from the estates that have filed federal returns is contingent on receipt of a copy of the final closing letter issued by the Internal Revenue Service (IRS). The department may require additional information to substantiate information provided by those estates that are not required to file federal returns. The release issued by the department will not bind or estop the department in the event of a misrepresentation of facts.

(3) **Amended returns.** An amended state return must be filed with the department within five days after any amended federal return is filed with the IRS and must be accompanied by a copy of the amended federal return. ~~((For those estates that are not required to file a federal return, an amended estate tax return must be received within three years from the date the original estate tax return was filed or within two years of paying the tax, whichever is later.))~~

(a) Any time that the amount of federal tax due is adjusted or when there is a final determination of the federal tax due the person responsible must give written notification to the department. This notification must include copies of any final examination report, any compromise agreement, the state tax closing letter, and any other available evidence of the final determination.

(b) If any amendment, adjustment or final determination results in additional state estate tax due, interest will be calculated on the additional tax due at the annual variable interest rate described in RCW 82.32.050(2).

(4) **Refunds.** Only the personal representative or the personal representative's retained counsel may make a claim for a refund of overpaid tax. If the application for refund, with supporting documents, is filed within four months after an adjustment or final determination of tax liability, the department shall pay interest until the date the refund is mailed. If the application for refund, with supporting documents, is filed after four months after the adjustment or final determination, the department shall pay interest only until the end of the four-month period. Any refund issued by the department will include interest at the existing statutory rate defined in RCW 82.32.050(2), computed from the date the overpayment was received by the department until the date it is mailed to the estate's representative. RCW 83.100.130(2).

~~((5) **Heirs of escheat estates.** Heirs to an estate may be located after the estate escheats to Washington. The personal representative of an escheat estate or a claimed heir must provide the department with all information and documentary evidence available that supports the heir's claim. All supporting documents must be in the English language when submitted to the department. The English translation of any foreign document shall be authenticated as reasonably required by the department.~~

~~(a) In all cases where there is a court hearing or the taking of a deposition on the question of a claimed heir, the personal representative shall give the department twenty days' written notice of such hearing or matter.~~

~~(b) The personal representative must give the department at least twenty days' written notice of~~

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~~the hearing on the final account and petition for distribution.~~

~~(c) The department has no statutory authority to pay interest on escheat refunds.))~~